

115 CMR 3.00: ADMINISTRATION

Section

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3.01: Establishment of Regions and Area Offices

- (1) Authority. The Department is authorized by M.G.L. c. 19B, §§ 2 and 12, to establish geographic areas for the organization and provision of mental retardation services or supports.
- (2) Regions and Area Offices. The Department shall establish such Regions and Area Offices and give them official names as it deems necessary and appropriate. The Department may in its discretion determine the total number of such regions and area offices, as well as their geographic scope of responsibility, which it may, from time to time, revise.

3.02: Advisory Boards

- (1) Authority and General Requirements.
  - (a) Authority. The Department is authorized by M.G.L. c. 19B to provide for boards of trustees at its facilities and for such citizen advisory boards for regions and area offices as the Commissioner deems appropriate.
  - (b) Affirmative Action. Appointments to the Department's advisory boards shall be made so as to provide for representation of minority groups consistent with all applicable affirmative action requirements.
  - (c) Special State Employees. For purposes of tort claims and conflicts of interest, all appointed members of the Department's advisory boards shall be special state employees.
  - (d) Waiver. With respect to any person nominated for appointment to an advisory board, the qualification standards set forth in 115 CMR 3.00 may be waived by the Commissioner for good cause except where such standards are otherwise required by law.
  - (e) Application of Open Meeting Law. The meetings of any board established under M.G.L. c.19B or subject to 115 CMR 3.02 shall be subject to the provisions of M.G.L. c. 30A, § 11A½ (the open meeting law), concerning the meetings of governmental bodies.
- (2) Area Office Citizen Advisory Boards. The Commissioner shall appoint for such area offices as he or she deems appropriate a citizen advisory board. If the Commissioner has determined that a separate citizen advisory board for a particular area office is not necessary, the citizen advisory board for the region that the area office is in will also serve as the citizen advisory board for that area office. In accordance with M.G.L. c. 19B, § 12, as inserted by St. 1986, c. 599, the membership, powers and duties of each such area office citizen advisory board shall be as follows:
  - (a) Membership Requirements. Each citizen advisory board shall consist of from 15 to 21 members appointed by the Commissioner, the total number of members to be in the discretion of the Commissioner, subject to the following requirements:
    - 1. \_ of the members shall live within the area served by the area office and the remaining members shall either live or work within the area served by the area office;
    - 2. The Commissioner shall seek to provide representation in the membership of the area office board reflective of the geographical and demographic diversity of the area served by the area office;
    - 3. No more than five of the members may be employees of the Commonwealth;

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4. No member shall be an employee of the Department;
  5. No member shall be an employee, officer, or member of the board of directors, of a non-profit or other private service provider agency which contracts with the Department;
  6. At least  $\frac{1}{2}$  of the members shall be persons with mental retardation, or family members or guardians of persons with mental retardation;
  7. Two of the members shall be family members or guardians of persons with mental retardation who are under 22 years of age, or persons who work in some capacity with children who are mentally retarded;
  8. Members shall serve without compensation, and shall be sworn to the faithful performance of their duties.
- (b) Terms of Office. The Commissioner shall appoint area office board members to terms of office as follows:
1. All members shall be appointed for three year terms; except that upon formation of a new area office board, the Commissioner shall appoint the members for terms as follows: one third of the board shall be appointed for one year, \_ shall be appointed for two years, and \_ shall be appointed for three years.
  2. Upon the expiration of the term of any member of an area office board, the Commissioner shall appoint a successor for a term of three years;
  3. In the event of a vacancy in the membership of a area office board where the term of the former member's appointment has not yet expired, the Commissioner may appoint a member who shall serve for the remainder of the unexpired term;
  4. Each area office board shall suggest for consideration by the Commissioner one or more names for each expiring term or vacancy;
  5. No member of an area office board shall be appointed for more than two consecutive three-year terms.
- (c) Duties and Powers. Each area office board shall have the following duties and powers:
1. To act as the representative of the citizens in the area served by the area office;
  2. To take cognizance of matters affecting individuals with mental retardation and to work to effect positive change;
  3. To advise regarding local needs and resources in the development of comprehensive mental retardation services and supports;
  4. To advise in the recruitment and selection of the area office director to be appointed by the Regional Director; provided that the Regional Director may designate a person to act as area office director in any case in which such office is vacant;
  5. To advise through participation in quality enhancement and other Departmental monitoring functions regarding the quality of services and supports within the area office;
  6. To assist in the location of community services and supports and in community acceptance and education efforts within the area served by the area office;
  7. To consult with the Commissioner or the area office director in the establishment of priorities for the area office and in policies regarding relationships with other agencies and organizations.
  8. To consult with the statewide Mental Retardation Advisory Council, established pursuant to M.G.L. c. 19B, § 11, regarding any matters concerning the area;
  9. To suggest for consideration by the Commissioner one or more members for appointment to the citizen advisory board for the area office's region;
  10. To elect from its members annually a president and such other officers as it deems appropriate; provided that the area office board shall adopt rules or by-laws for its proper organization and for procedures at meetings; provided further that such rules or by-laws and any subsequent amendments thereto shall be submitted to the Commissioner for approval;
  11. To hold at least four regular meetings during each year and to convene special meetings on the call of the area office board's president, or ten members of the Board, or the area office director, or the Commissioner; provided that the area office director shall be notified of, and may participate in, all meetings, but shall not vote;

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12. To appoint such advisory committees from its members as the area office board may from time to time deem necessary, provided that the members of such committees shall serve for such terms as the area office board may determine, and provided that such advisory committees are constituted with the knowledge and approval of the area office director.

(d) Removal. The Commissioner, after consultation with the other Committee members, may remove a person as a member. Grounds for removal shall include serious disregard or gross neglect of responsibilities or other actions which are in violation of law or of the regulations or policies of the Department or the procedures of the Committee.

(3) Regional Citizen Advisory Board. The Commissioner shall appoint for each region a regional citizen advisory board. The membership, powers and duties of each such advisory board shall be as follows:

(a) Membership Requirements. Each regional advisory board shall consist of from 15 to 21 members appointed by the Commissioner, the total number of members to be in the discretion of the Commissioner, subject to the following requirements:

1. \_ of the members shall live within the region and the remaining members shall either live or work within the region;
2. The Commissioner shall seek to provide representation in the membership of the regional advisory board reflective of the geographical and demographic diversity of the area served by the region.
3. No more than five of the members may be employees of the Commonwealth;
4. No member shall be an employee of the Department;
5. No member shall be any employee, officer, or member of the board of directors, of a non-profit or other private service provider agency which contracts with the Department;
6. At least ½ of the members shall be persons with mental retardation, or family members or guardians of such persons;
7. Two of the members shall be family members or guardians of persons with mental retardation who are under 22 years of age, or persons who work in some capacity with children with mental retardation;
8. One member shall be selected from each area office board within the region with the balance to be made up of at-large members.
9. Members shall serve without compensation, and shall be sworn to the faithful performance of their duties.

(b) Terms of Office. The Commissioner shall appoint regional citizen advisory board members to terms of office as follows:

1. All members shall be appointed for three year terms; except that upon formation of a new regional citizen advisory board, the Commissioner shall appoint the members for terms as follows: \_ of the board shall be appointed for one year, \_ shall be appointed for two years, and \_ shall be appointed for three years.
2. Upon the expiration of the term of any member of a regional citizen advisory board, the commissioner shall appoint a successor for a term of three years;
3. In the event of a vacancy in the membership of a regional citizen advisory board where the term of the former member's appointment has not yet expired, the Commissioner may appoint a member who shall serve for the remainder of the unexpired term;
4. Each regional citizen advisory board shall suggest for consideration by the Commissioner one or more names for each expiring term or vacancy;
5. No member of a regional citizen advisory board shall be appointed for more than two consecutive three-year terms.

(c) Duties and Powers. Each regional citizen advisory board shall have the following duties and powers:

1. To advise the director of the region on the development of comprehensive services and supports and priorities of need in the region;
2. To take cognizance of matters affecting individuals with mental retardation and to work to effect positive change;

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3. To advise in the recruitment and selection of the director of the region to be appointed by the Commissioner; provided that the Commissioner may designate a person to act as director of the Region in any case in which such office shall be vacant;
  4. To review and make recommendations concerning the annual budget for comprehensive mental retardation services and supports in the region;
  5. To elect from its members annually a president and such other officers as it deems appropriate; provided that the regional citizen advisory board shall adopt rules or by-laws for its proper organization and for procedures at meetings; provided further that such rules or by-laws and any subsequent amendments thereto shall be submitted to the Commissioner for approval;
  6. To hold at least five regular meetings in each year and to convene special meetings on the call of the regional citizen advisory board president, or ten members of the board, or the director of the region, or the Commissioner; provided that the director of the region shall be notified of, and may participate in, all meetings, but shall not vote. One of the five regular meetings shall be a joint meeting with the boards of trustees or advisory boards of the facilities, if any, located in the region;
  7. To serve as the citizen advisory board for a particular area office within the region, where the Commissioner has determined that a separate citizen advisory board for such area office is not necessary.
- (d) Removal. The Commissioner, after consultation with the other Committee members, may remove a person as a member. Grounds for removal shall include serious disregard or gross neglect of responsibilities or other actions which are in violation of law or of the regulations or policies of the Department or the procedures of the Committee.
- (4) Boards of Trustees for Facilities. The Commissioner may appoint for each Facility a board of trustees. The membership, powers and duties of each such board of trustees shall be as follows:
- (a) Membership Requirements. Each board of trustees shall consist of nine trustees appointed by the Commissioner subject to the following requirements:
    1. Five of the trustees shall be persons with mental retardation who are or have been recipients of mental retardation services or their guardians or family members;
    2. The trustees shall serve without compensation and shall be sworn to the faithful performance of their duties.
  - (b) Terms of Office. Trustees shall be appointed by the Commissioner to terms of office as follows:
    1. All trustees shall be appointed for three year terms; except upon formation of a new board of trustees, the Commissioner shall appoint the members for terms as follows: 1/3 of the board shall be appointed for one year, 1/3 shall be appointed for two years, and 1/3 shall be appointed for three years.
    2. Upon expiration of the term of any member of a board of trustees, the Commissioner shall appoint a successor for a term of three years;
    3. In the event of a vacancy in the membership of a board of trustees for a facility where the term of a former trustee's term has not yet expired, the Commissioner may appoint a trustee who shall serve for the remainder of the unexpired term;
    4. No member of a board of trustees shall be appointed to serve more than two consecutive three year terms.
  - (c) Duties and powers. Each board of trustees shall have the following duties and powers:
    1. To visit and become familiar with the facility;
    2. To advise in the recruitment and selection of the facility director to be appointed by the Commissioner, provided that the Commissioner may designate a person to act as facility director in any case in which such office shall be vacant;
    3. To review and make recommendations concerning the annual budget for the facility;
    4. To review such services and supports provided by or at the facility;
    5. To make suggestions to the Department for improvements in the facility, especially those that will make the administration thereof more effective, economical and respectful of human rights and dignity;

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6. To elect from its members annually a chairperson and such other officers as it deems appropriate, provided that the board shall adopt rules or by-laws for its proper organization and for procedures at meetings and provided further that such rules or by-laws and amendments thereto shall be submitted to the Commissioner for approval;
7. To hold at least five regular meetings per year and convene special meetings at the call of the chairperson of the board, a majority of the board, or the facility director. One of the regular meetings shall be a joint meeting with the regional citizen advisory board for the region in which the facility is located.

(5) Mental Retardation Advisory Council. The membership and responsibilities of the Statewide Mental Retardation Advisory Council created by M.G.L. c. 19B, § 11, as inserted by St. 1986, c. 599, shall be as follows:

(a) Membership Requirements. The Advisory Council shall consist of 15 members appointed by the Secretary of Health and Human Services and approved by the Governor subject to the following requirements:

1. Five of the members shall be citizens who are members of the Department's citizen advisory boards across the state;
2. At least five of the remaining ten members shall be appointed to represent one of the following professions and groups: state level medical, psychological, nursing, educational, social work, occupational therapy, or bar associations; state level associations for mental retardation; industrial and labor groups; and the clergy;
3. At least one member shall be a person with mental retardation;
4. No member shall be an employee of the Department;
5. The Secretary shall seek to provide representation in the membership of the Advisory Council reflective of the geographical and demographic diversity of the state;
6. The Advisory Council shall serve without compensation, but each member shall be reimbursed by the Commonwealth for all expenses incurred in the performance of his or her official duties.

(b) Terms of Office. Advisory Council members shall be appointed by the Secretary of Health and Human Services with the approval of the Governor to terms of office as follows:

1. All members shall be appointed for three year terms;
2. Upon the expiration of the term of any member of the Advisory Council, the Secretary of Health and Human Services with the approval of the Governor shall appoint a successor for a term of three years;
3. In the event of a vacancy in the membership of the Advisory Council where the term of the former member's appointment has not yet expired, the Secretary of Health and Human Services with the approval of the Governor may appoint a member who shall serve for the remainder of the unexpired term;
4. No member of the Advisory Council shall be appointed to serve more than two consecutive three-year terms.

(c) Duties and Powers. The Advisory Council shall have the following duties and powers:

1. To advise the Commissioner on policy, program development, and priorities of need in the Commonwealth for services and supports in mental retardation;
2. To participate with the Department in holding a regular series of public hearings throughout the Commonwealth to obtain the views of the area office and regional citizen advisory boards and other citizens concerning the services of the Department and the need for mental retardation services;
3. To review the annual plans and the proposed annual budget of the Department, and make recommendations to the Commissioner in regard thereto;
4. To elect a chairperson annually;
5. To hold at least four regular meetings per year and convene special meetings at the call of the chairperson of the Council, a majority of the Council, or the Commissioner.

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(6) Human Rights Advisory Committee. The Commissioner shall appoint a statewide Human Rights Advisory Committee. The membership, powers and duties of the Human Rights Advisory Committee shall be as follows:

(a) Membership Requirements. The Committee shall consist of 15 or more members appointed by the Commissioner, subject to the following requirements:

1. The Commissioner shall seek to provide representation in the membership of the Committee reflective of the geographical and demographic diversity of the state;
2. No more than three of the members may be employees of the Commonwealth;
3. A majority of the membership of the Committee shall be comprised of one or more representatives of each of the following: persons with mental retardation; family members or guardians of persons with mental retardation; representatives of advocacy organizations; psychologists; psychiatrists; attorneys; service providers;
4. Members shall serve without compensation, and shall be sworn to the faithful performance of their duties.

(b) Terms of Office. The Commissioner shall appoint Committee members to terms of office as follows:

1. All members shall be appointed for three year terms;
2. Upon the expiration of the term of any member of the Committee, the Commissioner shall appoint a successor for a term of three years;
3. In the event of a vacancy in the membership of the Committee where the term of the former member's appointment has not yet expired, the Commissioner may appoint a member who shall serve for the remainder of the unexpired term;
4. The Committee shall suggest for consideration by the Commissioner one or more names for each expiring term or vacancy;
5. No member of the Committee shall be appointed for more than two consecutive three-year terms.

(c) Duties and Powers. The Committee shall have the following duties and powers:

1. To advise the Commissioner or designee on the affirmation, promotion, protection, and monitoring of the human and civil rights of individuals served by the Department;
2. To assist the Commissioner or designee in identifying the human and civil rights implications of existing and proposed Department policies and procedures, and to review existing Department policies every two years;
3. To assist the Commissioner or designee in the design and implementation of training programs for human rights committees and Department and provider staff regarding human and civil rights issues;
4. To advise the office for human rights regarding its role and function within the Department;
5. To advise the Commissioner on the appointment of the director of the office for human rights;
6. To elect from its members annually a chairperson and such other officers as it deems appropriate; provided that the Committee shall adopt rules or by-laws for its proper organization and for procedures at meetings; provided further that such rules or by-laws and any subsequent amendments thereto shall be submitted to the Commissioner for approval.
7. To hold at least four regular meetings in each year and to convene special meetings on the call of the Committee's chairperson, or ten members of the Committee, or the director of the office for human rights, or the Commissioner, or the Assistant Commissioner of Quality Enhancement; provided that the director of the office for human rights shall be notified of, and may participate in, all meetings, but shall not vote;
8. To present to the Commissioner an annual report on the performance of the Department in the area of human and civil rights which shall also contain any recommendations to improve such performance.

(d) Removal. The Commissioner, after consultation with the other Committee members, may remove a person as a member. Grounds for removal shall include serious disregard or gross neglect of responsibilities or other actions which are in violation of law or of the regulations or policies of the Department or the procedures of the Committee.

3.03: Designation of Facilities/State Schools

The facilities (formerly referred to as the "state schools" and referenced in M.G.L. c. 19B, §§ 7 through 10, 12 as such) and the names thereof shall be the following: Paul A. Dever Developmental Center (formerly Paul A. Dever State School); Walter E. Fernald Developmental Center (formerly Walter E. Fernald State School); Wrentham Developmental Center (formerly Wrentham State School); Irving Glavin Regional Center; Hogan Regional Center; until January 1, 1995, the J.T. Berry Rehabilitation Center; Monson Developmental Center; and Templeton Developmental Center (formerly Templeton Campus of Fernald State School).

3.04: Admission to and Discharge from the Facilities

The Department shall maintain a written policy on the standards and procedures for admission to and discharge from the facilities listed in 115 CMR 3.03. No person shall be admitted to a facility without providing informed consent to admission and without the approval of the facility director and the Commissioner.

3.05: Charges for Care - Community Residential Services and Supports

(1) Authority. Under M.G.L. c. 123B, § 16, the Department is authorized to make and regulate charges for care.

(2) Purpose and Scope. 115 CMR 3.05 sets forth the rules governing charges for residential services and supports provided at a particular location that either the Department operates or funds through a contract. 115 CMR 3.00 does not apply to residential services and supports provided at a facility.

(3) Definitions. As used in 115 CMR 3.05 and 3.06 only, the terms listed below have the following definitions:

Fee-payor means any of the following persons, each of whom may be liable for charges for residential services and supports of an individual:

- (a) the individual who receives residential services and supports;
- (b) a guardian, conservator, representative payee or other person who controls funds of the individual; however, the guardian, conservator, representative payee, or other person is liable only with respect to the individual's funds under his/her control.

Fee-payor charge means the portion of the residential rate to be charged to the fee-payor.

Income means any monies received, including recurrent payments, payments in kind, or lump sum payments.

Liquid Asset means cash and all property capable of ready conversion into cash regardless of whether such assets are held jointly or solely. Except as otherwise provided, liquid assets do not include life insurance or its cash value for the purpose of calculating charges for residential services and supports.

Recurrent payment means income received at regular intervals, though not necessarily in constant amounts, and include, but are not limited to:

- (a) compensation for services rendered (earned income);
- (b) net income derived from a business;
- (c) interest;
- (d) net rental income;
- (e) dividends;
- (f) annuities;
- (g) pensions;
- (h) unemployment compensation;
- (i) worker's compensation;
- (j) royalties;
- (k) Veteran's Administration benefits;
- (l) Supplemental Security Income benefits;
- (m) Old Age and Survivor Disability Insurance benefits.

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Residential rate means the annualized rate approved by the Division of Purchased Services pursuant to St. 1992, c. 133, § 113 and/or the Rate Setting Commission pursuant to M.G.L. c. 6A, or pending the approval of such rate, the annualized rate the Department submits to the Division of Purchased Services or the Rate Setting Commission for residential services and supports to be provided at a particular location.

(4) Notice.

- (a) The Department shall give written notice of the charge to each fee-payor:
  - 1. prior to the individual receiving residential services and supports, where applicable;
  - 2. prior to a change in the charge;
  - 3. at any other time deemed appropriate by the Department.
- (b) The notice shall be sent at least 30 days prior to the date payment is due and shall show how the charges were determined and explain the appeal process.

(5) Determination of Charges.

- (a) The residential charge for an individual who is not in a facility is the residential rate for the residential services and supports provided.
- (b) The residential charge shall be calculated in monthly amounts. Charges for individuals who received residential services and supports for less than a month shall be adjusted *pro rata*.
- (c) For any individual whose cost for residential services and supports is covered by the Medicaid program, any third party contract, insurance, reimbursement, or entitlement programs, the Department shall charge the Medicaid program or any other third party payor the residential charge due that month. If these sources provide for payment of less than the residential charge, then the Department shall charge the fee-payor(s) in accordance with 115 CMR 3.05(5).
- (d) For any individual who does not have third party coverage to pay for residential services and supports, the Department shall charge the fee-payor(s) in accordance with 115 CMR 3.05(5).
- (e) For an individual receiving recurrent payments other than earned income, the monthly fee-payor charge shall be an amount equal to 75% of the individual's recurrent payments received in the month for which the charge for residential services and supports accrued; provided, however, the fee-payor charge is subject to the following reductions:
  - 1. Reduction by the amount the 75% of that month's recurrent payments exceed, if any, the remaining balance attributable to the fee-payor under 115 CMR 3.05(5)(c);
  - 2. Reduction by the amount that the personal needs allowance established under state and federal laws governing the Medicaid program exceeds 25% of that month's recurrent payments.
  - 3. Reduction by the amount of adjustment, if any, permitted under 115 CMR 3.05(6);
- (f) For an individual receiving recurrent payments and earned income, the monthly fee-payor charge shall be an amount equal to 75% of the individual's recurrent payments received in the month for which the charge for residential services and supports accrued plus an additional 50% of earned income that exceeds \$65 in that month; provided, however, the fee-payor charge is subject to the following reductions:
  - 1. Reduction by the amount the 75% of that month's recurrent payments exceed, if any, the remaining balance attributable to the fee-payor under 115 CMR 3.05(5)(c);
  - 2. Reduction by the amount that the personal needs allowance established under state and federal laws governing the Medicaid program exceeds 25% of that month's recurrent payments.
  - 3. Reduction by the amount of adjustment, if any, permitted under 115 CMR 3.05(6);
- (g) For an individual receiving earned income only, the monthly fee-payor charge shall be an amount equal to 50% of earned income that exceeds \$65 in the month the charge for residential services and supports accrued; provided, however, the fee-payor charge is subject to the following reductions:
  - 1. Reduction by the amount the 75% of that month's recurrent payments exceed, if any, the remaining balance attributable to the fee-payor under 115 CMR 3.05(5)(c);
  - 2. Reduction by the amount that the personal needs allowance established under state and federal laws governing the Medicaid program exceeds 25% of that month's recurrent payments.
  - 3. Reduction by the amount of adjustment, if any, permitted under 115 CMR 3.05(6);



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(h) For an individual who, during the month, receives no recurrent payments other than interest and dividends, but has liquid assets which are deemed countable assets by the Medical Assistance Program for the purpose of establishing or maintaining Medicaid eligibility, the monthly fee-payor charge shall be an amount equal to 75% of the appropriate Supplemental Security Income benefit level for the "SSI Payment Standard" category that is in effect in the month the charge for residential services and supports accrued; provided, however, such charge may be reduced by the amount of adjustment permitted under 115 CMR 3.05(6). In any month where the fee-payor charge would cause liquid assets to fall below \$1,000, that month's charge will be adjusted to allow the individual to retain \$1,000 in liquid assets, and the provisions of 115 CMR 3.05(7) shall apply to the adjustment.

For any individual whose annual income exceeds 200% of the federal poverty line, the Department may assess an additional charge of 25% of the income above the poverty line.

(i) The Department shall determine fee-payor charges at least annually and upon notification by a fee-payor of any change in circumstance pursuant to 115 CMR 3.05(9).

(6) Adjustment to Charges. For an individual who has necessary expenses but does not have sufficient funds to pay for these expenses in a particular month, the monthly fee-payor charge may be reduced by an amount that will enable the individual to pay such expenses. Expenses deemed necessary may include, but are not limited to, the following:

- (a) Reasonable transition expenses, including appropriate deposits to savings or checking accounts, necessary to enable the resident to move to a less restrictive living environment within the next 12 months;
- (b) The cost of premiums required to enroll and maintain the individual in a health insurance program;
- (c) Medical and dental expenses of the individual, including medication costs, not covered by the residential rate, insurance or other third party reimbursement;
- (d) Transportation expenses of the individual for services not provided under M.G.L. c. 19B, § 17;
- (e) Alimony payments owed by the individual;
- (f) Loan payments, but only if the loan was incurred by the individual to pay for expenses enumerated in 115 CMR 3.05(6);
- (g) Funeral related payments and expenses of the individual;
- (h) Educational costs, *e.g.*, tuition, of the individual;
- (i) Uniforms or tools if required by the job and required to be purchased by the individual as the employee;
- (j) Child support and day care expenses of the individual's minor child;
- (k) Maintenance needs of the individual's spouse, minor children, and dependents at home.

(7) Accumulated Unpaid Charges.

- (a) Every adjustment to charges made pursuant to 115 CMR 3.05(6) and resulting in a reduction in the fee-payor charge shall accumulate as an unpaid charge and shall be subject to future billing as the individual's circumstances permit.
- (b) The Department may bill a fee-payor for accumulated unpaid charges when the individual's income increases or circumstances change, subject to adjustments for necessary expenses as provided for under 115 CMR 3.05(6).

(8) Collection of Charges.

- (a) The Department shall collect charges for residential services and supports from the fee-payor, any contract, insurance, or third party reimbursement or entitlement programs, or any combination thereof.
- (b) Any amount received as income to the individual shall be treated as income for a period of 60 days from the date of receipt by the fee-payor for purposes of calculating the monthly fee-payor charges.
- (c) As otherwise permitted by law, the Department may assert a lien against an individual's assets.

(9) Responsibility of Fee-Payers.

- (a) Fee-payers shall provide information on income, assets, and expenses of the individual to the Department upon request, and shall report any known change in circumstance which could result in a change in the charge, or a change in the party to be billed, or a change in

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the funds subject to charge. Fee-payors must report each change in circumstance within ten days from the date they first learn of the change.

(b) In cases where information is not reported as required in 115 CMR 3.05(9)(a), the Department may determine the charge and adjustments based upon the best available information, and proceed to assess and collect charges for residential services and supports. The limitation set out in 115 CMR 3.05(8)(b) shall not apply to unreported changes in funds subject to charge.

(c) Fee-payors shall pay charges in a timely manner after billing.

(10) Appeal. Within 30 days of being notified of the amount of the monthly fee-payor charge, a fee-payor may appeal the charge by notifying in writing the Commissioner.

(a) Grounds for appealing a charge for residential services and supports shall be as follows:

1. Miscalculation of the charge;
2. Misidentification of the fee-payor;
3. Failure to adjust the charge to account for necessary expenses in accordance with 115 CMR 3.05(6).

(b) During pendency of the appeal, the Department shall continue to bill the fee-payor the monthly charge for residential services and supports.

(c) The Commissioner or designee shall hear the appeal within 30 days of receipt of the notice. The fee-payor shall be given an opportunity to present oral or written statements relevant to the charge, to question a representative of the Department concerning the charge, and to have a representative, if any, present. Such a proceeding shall not be an adjudicatory proceeding within the meaning of M.G.L.c. 30A. The Commissioner shall make a decision within 30 days of hearing the case, and shall notify in writing the fee-payor stating the reasons for such decision. The decision of the Commissioner is final.

3.06: Charges for Care - Department Facilities

(1) Authority. Under M.G.L. c. 123B, § 16, the Department of Mental Retardation is authorized to make charges for care of any person in its facilities.

(2) Purpose and Scope. 115 CMR 3.06 sets forth the rules governing charges for residential services and supports at any of the facilities listed in 115 CMR 3.03.

(3) Definitions. See 115 CMR 3.05(3).

(4) Notice.

(a) The Department shall give written notice of the charge to each fee-payor:

1. prior to the provision of residential services and supports in the facility, where applicable;
2. prior to a change in the charge;
3. at any other time deemed appropriate by the Department.

(b) The notice shall be sent at least 30 days prior to the date payment is due and shall show how the charges were determined and explain the appeal process.

(5) Determination of Charges.

(a) The residential charge for an individual is the residential rate for the residential services and supports provided at the facility.

(b) The residential charge shall be calculated in monthly amounts. Charges for individuals who received residential services and supports for less than a month shall be adjusted *pro rata*.

(c) For any individual whose cost for residential services and supports is covered by the Medicaid program or by other third party contract, insurances, reimbursement, or entitlement programs, the Department shall charge the Medicaid Program and any other third party payor the residential charge due that month. If these sources provide for payment of less than the residential charge, then the Department shall charge the fee-payor in the accordance with 115 CMR 3.06(5)(e).

(d) For any individual who is not eligible to participate in the Medicaid program or whose cost for residential services and supports is not covered by other third party contract, insurances, reimbursement, or entitlement programs, the Department shall charge the fee-payor in accordance with 115 CMR 3.06(5)(e).

## 3.06: continued

(e) The monthly fee-payor charge for an individual in a facility shall be an amount equal to the sum of the individual's recurrent payments received during the month and, for any individual who has liquid assets which are deemed countable assets by the Medicaid Assistance Program for the purpose of establishing or maintaining Medicaid eligibility, 1/12 of the liquid assets held by that individual at the end of that same month for which the charge for residential services and supports accrued; provided however, such charge is subject to the following:

1. Reduction by the amount the monthly fee-payor charge exceeds the remaining balance due from the fee-payor under 115 CMR 3.06(5)(c);
2. Reduction by the amount of the personal needs allowance established under state and federal laws governing the Medicaid program;
3. Reduction by the amount of adjustment, if any, permitted under 115 CMR 3.06(6);
4. Dependent funds held by a director of a facility shall be included as liquid assets for purposes of calculating the monthly fee-payor charge until the sum total of accumulated unpaid charges equals the amount of the individual's dependent funds, at which time the Department shall exclude the total of dependent funds in any subsequent calculation of the monthly fee-payor charge.
5. In any month where the fee-payor charge would cause liquid assets to fall below \$1,000, that month's charge will be adjusted to allow the individual to retain \$1,000 in liquid assets, and the provisions of 115 CMR 3.06(7) shall apply to the adjustment.

(f) The Department shall determine fee-payor charges at least annually and upon notification from a fee-payor of any change in circumstance as required by 115 CMR 3.05(9).

(6) Adjustment to Charges. If an individual who has necessary expenses but does not have sufficient funds to pay for these expenses in a particular month, the monthly fee-payor charge may be reduced by an amount that will enable the individual to pay such expenses. Expenses deemed necessary may include, but are not limited to, the following:

- (a) Reasonable transitional expenses, including appropriate deposits to savings or checking accounts, necessary to enable the individual to move to a less restrictive living environment within the next 12 months;
- (b) The cost of premiums required to enroll and maintain the individual in a health insurance program;
- (c) Medical and dental expenses of the individual, including medication costs not covered by the residential rate, insurance or other third party reimbursement;
- (d) Transportation expenses of the individual for services not provided under M.G.L. c. 19B, § 17;
- (e) Alimony payments owed by the individual;
- (f) Loan payments, but only if the loan was incurred by the individual to pay for expenses enumerated in this subsection;
- (g) Funeral related payments and expenses of the individual;
- (h) Educational costs, *e.g.*, tuition, of the individual;
- (i) Uniforms or tools if required by the job and required to be purchased by the individual as the employee;
- (j) Child support and day care expenses of the individual's minor child;
- (k) Maintenance needs of the individual's spouse, minor children, and dependents at home;

(7) Accumulated Unpaid Charges.

- (a) Every adjustment to charges made pursuant to 115 CMR 3.06(6) and resulting in a reduction in the monthly fee-payor charge shall accumulate as an unpaid charge and shall be subject to future billing as the individual's circumstances permit.
- (b) The Department may bill a fee-payor for accumulated unpaid charges when the individual's income increases or circumstances change, subject to adjustments for necessary expenses as provided for under 115 CMR 3.06(6).

3.06: continued

(8) Collection of Charges.

- (a) The Department shall collect charges for residential services and supports from the fee-payor(s), the Medicaid Program, a third party payor or any combination thereof.
- (b) Any amount received as income to the individual shall be treated as income for a period of 60 days from the date of receipt by the fee-payor for purposes of calculating the monthly fee-payor charges.
- (c) The amount of the resident's charge which would be recoverable from dependent funds held by the facility director shall not be collected by the Department until such funds are transferred to the individual, his or her fiduciary other than the facility director, or upon the individual's death. At that time all accumulated unpaid charges shall be payable to the Department by the individual, the new fiduciary or the estate of the individual.
- (d) As otherwise permitted by law, the Department may assert a lien against an individual's assets.

(9) Responsibility of Fee-Payors.

- (a) Fee-payors shall provide information on income, assets and expenses of the individual to the Department upon request, and shall report any known change in circumstance which could result in a change in the charge, or a change in the party to be billed, or a change in the funds subject to charge. Fee-payors must report each change in circumstance within ten days from the date they first learn of the change.
- (b) In cases where information is not reported as required in 115 CMR 3.06(9)(a), the Department may determine the charge and adjustments based upon the best available information, and proceed to assess and collect charges for residential services and supports. The limitation set out in 115 CMR 3.06(5)(a) shall not apply to unreported changes in funds subject to charge.
- (c) Fee-payors shall pay charges in a timely manner after billing.

(10) Appeal. Within 30 days of being notified of the amount of the individual's charge, a fee-payor may appeal the charge by notifying in writing the Commissioner.

- (a) Grounds for appealing a charge for residential services and supports shall be as follows:
  - 1. Miscalculation of the charge;
  - 2. Misidentification of the fee-payor;
  - 3. Failure to adjust the charge to account for necessary expenses in accordance with 115 CMR 3.05(6).
- (b) During pendency of the appeal, the Department shall continue to bill the fee-payor the monthly charge for residential services and supports.
- (c) The Commissioner or designee shall hear the appeal within 30 days of receipt of the notice. The fee-payor shall be given an opportunity to present oral or written statements relevant to the charge, to question a representative of the Department concerning the charge, and to have a representative, if any, present. Such a proceeding shall not be an adjudicatory proceeding within the meaning of M.G.L. c. 30A. The Commissioner shall make a decision within 30 days of hearing the case, and shall notify in writing the fee-payor stating the reasons for such decision. The decision of the Commissioner is final.

3.07: Cafe

(1) The facilities listed in 115 CMR 3.03 may sell food and merchandise in an area or areas designated by the facility director or the cafe committee, appointed pursuant to 115 CMR 3.07(2). Such area or areas in any facility shall be known as the "cafe."

(2) A cafe committee shall be selected by each facility. The facility director or designee shall be the chairperson of this committee which will consist of eight members chosen as representatives of the following groups: facility staff; individuals who are residents; parents or families; facility trustees; organizations concerned with the welfare of individuals who are residents. At least three members of the committee shall not be employees of the Department.

3.07: continued

- (3) The cafe management shall be the responsibility of an employee or employees selected by the cafe committee. Such employee or employees may be assisted by residents, parents, and volunteers.
- (4) Income in excess of the cost of operation of the cafe shall be called the cafe fund. The cafe fund shall be held by the treasurer of the facility. Suitable bond shall be required for employees regularly working in the cafe bar. The cost of such bonds shall be paid from the cafe fund.
- (5) Cafe merchandise shall be purchased from the cafe fund. No merchandise or property of the state other than that purchased from the cafe fund shall be sold in the cafe without written approval of the Commissioner or designee.
- (6) Inventory of goods shall be kept at a reasonable level consistent with sales and an inventory of goods shall be taken monthly.
- (7) Income in excess of cost of the operation of the cafe shall be expended for the benefit of residents. The cafe committee will determine the expenditure of all monies received by the cafe fund consistent with 115 CMR 3.00.
- (8) The cafe committee shall make a quarterly report to the facility treasurer on the income to and expenditures from the cafe fund; and the treasurer shall make an annual report on the fund's income and expenditures to the Assistant Commissioner with responsibility for management and finance. Such annual report shall be in the form and manner prescribed by the Assistant Commissioner.

3.08: Funds Belonging to Residents

- (1) Authority. The facility director of any facility listed in 115 CMR 3.03 is authorized under M.G.L. c. 123B, § 12(a) to deposit in a bank those funds belonging to a resident and to use these funds for the benefit of the resident. 115 CMR 3.08 is promulgated pursuant to this authority.
- (2) Definition of Funds. For the purpose of 115 CMR 3.08, "funds" refer to cash, checks, negotiable instruments, or any other income or liquid personal property.
- (3) Scope. 115 CMR 3.08 shall apply only to the maintenance and expenditure of an individual's funds which are located within the facility or which are deposited with the facility director or designee.
- (4) Upon Admission and Prior to Evaluation.
  - (a) 115 CMR 3.08(4) shall apply only from the time of admission of the individual until such time as there has been an evaluation under 115 CMR 3.08(5).
  - (b) Upon the admission of an individual to a facility, the individual shall be encouraged, but shall not be required, to temporarily deposit any funds and other valuables on his or her person with the facility director or designee, pending the evaluation required under 115 CMR 3.08(5). The individual shall receive a receipt for his or her funds and valuables.
  - (c) If any funds are so deposited with the facility, an appropriate written record shall be made of the deposit. A copy of such record shall be made available to the individual or his or her conservator or guardian.

3.08: continued

(d) Upon admission of an individual and until such time as there has been an evaluation under 115 CMR 3.08(5), the individual's funds which have been deposited with the facility director or designee, shall be maintained in a safe or in a bank account, provided, however, that if the individual's funds exceed \$250 the individual's funds shall be maintained in an individual interest-bearing bank account. The interest which accrues on a bank account shall be added to the individual's funds. Unless the individual has a guardian or conservator, the individual shall have an unrestricted right to manage and spend all of his or her funds in his or her sole discretion until such time as there has been an evaluation under 115 CMR 3.08(5). Availability of funds shall be governed by 115 CMR 3.08(9).

(5) Evaluation.

(a) Unless a guardian or conservator has been appointed, the individual's ability to manage and spend his or her funds shall be evaluated, as soon as possible after admission (but no later than 30 days after admission), and at least every 12 months thereafter or upon the individual's request.

(b) The individual shall be assisted to manage and spend his or her funds consistent with his or her capabilities and the levels of support provided to him or her.

(c) Depending on the outcome of the evaluation the facility shall:

1. assist the individual to spend and manage his or her funds with no interference by the facility;
2. develop a plan to teach or assist the individual to manage all or a portion of his or her own funds according to his or her capabilities and the levels of support provided to him or her;
3. develop a plan for the necessary spending of the individual's funds in a manner that would benefit the individual and is consistent with 115 CMR 3.08, if the evaluation establishes that the individual cannot beneficially use his or her money to satisfy his or her needs and desires, even with teaching and support.

Objectives of the plan developed pursuant to 115 CMR 3.08(5)(a)2. or 3. shall become incorporated into the individual's ISP as part of the facility's separate provider strategy.

(d) For all evaluations, the individual shall be informed of the provisions of 115 CMR 3.08(5), shall have the right to present any information on his or her behalf, shall have the right to be assisted by a person of his or her choice, and shall be informed of the result of the evaluation. The results of the evaluation shall become a part of the individual's record.

(6) Appointment of Guardian or Conservator. In accordance with M.G.L. c. 123B, § 11, if an individual has been under the care of the Department as a resident for at least six months, if the individual is not able to manage and spend any of his or her funds independently (as determined by the evaluation under 115 CMR 3.08(5)), and if the individual is not under guardianship or conservatorship, the facility director shall notify the individual's nearest living relative and recommend that the necessary steps be taken for the appointment of a conservator, or if appropriate, the appointment of a guardian.

(7) Use of Independent Funds by Individual.

(a) 115 CMR 3.08(7) shall apply only to those funds which the individual is able to manage and spend, with or without assistance, as determined by the evaluation under 115 CMR 3.08(5). Such funds are referred to as "independent funds." The individual shall have the right to manage and spend his or her independent funds.

(b) Where the evaluation establishes that the individual is able to manage and spend his or her funds without assistance or training, the individual shall be assisted to put such funds into an individual bank account within the exclusive control of the individual or, if he or she so desires, within the exclusive control of the individual and one or more other persons who shall be selected by the individual. Without losing any control over the use of the funds, the individual shall be assisted to deposit part or all of such funds in the group bank account described in 115 CMR 3.08(8)(f). No person other than the individual (and persons selected by the individual pursuant to 115 CMR 3.08(7)) shall have any control over the individual's management and expenditure of independent funds. Nothing in 115 CMR 3.08 shall in any way restrict the individual's management and expenditure of these funds.

3.08: continued

(8) Management and Expenditure of Dependent Funds.

(a) Scope -- Dependent Funds. 115 CMR 3.08(8) shall apply only to those funds which the individual is unable to manage and spend, with or without assistance as determined by the evaluation under 115 CMR 3.08(5) or as determined by a court of competent jurisdiction in a guardianship or conservatorship proceeding, and those Social Security and Supplemental Security Income funds which are received by the facility director as the representative payee of the individual. Such funds are referred to as "dependent funds."

(b) Facility Director. In accordance with M.G.L. c. 123B, § 12(a) and applicable federal regulations, the facility director shall bear ultimate responsibility for the management and expenditure of all dependent funds.

(c) Designated Staff. In order to carry out his or her responsibility as to the proper management and expenditure of dependent funds, the facility director shall designate staff within the facility who shall be directly responsible to the facility director and who shall determine on a day-to-day basis how to best manage and spend an individual's dependent funds, consistent with 115 CMR 3.08(8). These designated staff shall have sufficient contact with the individual to have first hand knowledge of the individual and to be responsive to the individual's day-to-day needs and desires. Designated staff shall consult with an individual prior to making a purchase for that individual. The facility director shall establish a committee to make recommendations as to the expenditure of dependent funds.

(d) Appropriate Expenditures.

1. Generally, dependent funds should be used to facilitate the individual's habilitation, and to help the individual live a normal and comfortable life. Where the individual has unmet current needs, continued saving of dependent funds is not in the individual's best interest unless such saving is for a foreseeable and appropriate future purpose (such as to pay for living expenses upon discharge).

2. Not only should the individual's needs be considered but also his or her desires, where such expenditures are for the benefit of the individual and are consistent not only with the individual's desires but also with his or her resources and obligations. For example, clothing might be purchased which is not only functional but also stylish.

3. Dependent funds shall be used only for purposes which directly benefit the individual. For example, no dependent funds shall be used for a gift to an employee. No dependent funds shall be expended for any item or service which the facility is legally obligated to supply the individual.

4. Under no circumstances shall dependent funds be used to provide any item or material that a facility is legally obligated to provide for the implementation of the individual's ISP.

(e) Group Purchases. Dependent funds of an individual may be used together with funds of other individuals to purchase an item or service (*i.e.*, a group purchase) pursuant to the requirements contained in 115 CMR 3.08(8)(d).

(f) Individual Savings Accounts and Group Bank Account.

1. A "group bank account" is a single bank account for some or all individuals in the facility and is used to allow the Facility Director or designee easy access to funds which are needed by individuals for daily or weekly expenses.

2. If the individual's dependent funds at any time exceed \$250, no more than \$200 of such funds shall be maintained in a group bank account, and the balance of funds exceeding \$200 shall be maintained in an individual savings account in the name of the individual, but under the control of the Facility Director or designee. So long as the individual's dependent funds do not exceed \$250, all such funds may be maintained in a group bank account. An individual, who has independent funds pursuant to 115 CMR 3.08(7), may, in his or her discretion, deposit part or all of such funds in the group bank account without losing any control over the use of such funds. Any interest which accrues on that individual's share of the group bank account shall be added to the individual's funds and accounted for accordingly.

3.08: continued

(9) Availability of Funds.

(a) Consistent with 115 CMR 3.08(4), 3.08(7) and 3.08(8), the Facility Director or designee shall make withdrawals and deposits, write checks payable to the individual (or to the ultimate recipient of the funds), and disburse cash to the individual or staff designated pursuant to 115 CMR 3.08(8)(c). It shall not be necessary for the individual to sign a requisition for the release of dependent funds.

(b) At any time when emergency funds are needed and for at least two hours a day during at least five days each week, the Facility Director or designee shall be available to disburse cash and write checks pursuant to 115 CMR 3.08(9)(a).

(10) Record of Funds. All funds received from the individual or on his or her behalf and all funds disbursed shall be accounted for and a permanent record made showing the amount of funds received, date received and source of funds. All funds disbursed shall be accounted for and a permanent record made of the person receiving funds, purpose of disbursement, amount of the disbursement, and date of disbursement.

(11) Accounting for Funds. The following persons shall be provided a complete written account of all funds of the individual, and a written statement of the current balance of funds of the individual:

(a) the individual;

(b) in the event the individual is determined unable to manage or spend his or her funds, the staff designated as responsible for expenditures for the individual under 115 CMR 3.08(8)(c);

(c) the individual's guardian or conservator;

(d) those persons responsible for evaluation of the individual pursuant to 115 CMR 3.08(5); and

(e) in the event the facility director is the representative payee of the individual, the District Office of the Social Security Administration.

(12) Endorsement of Checks. A check made payable to an individual may be endorsed by the Facility Director for deposit to the individual's account only when

(a) the check does not exceed \$500;

(b) the individual is unable or refuses to endorse the check for the purpose of depositing it; and

(c) pursuant to 115 CMR 3.08(5) the individual is found unable to manage and spend the funds represented by the check.

In the event one or more of the above circumstances is not met, a check must be endorsed by the individual prior to its being deposited in his or her account.

(13) Training Individuals to Manage Own Funds. A high priority shall be given to the training of individuals in the management and use of their own money.

(14) Regulation of Social Security Income.

(a) Federal regulations govern the use of Social Security funds and Supplemental Security Income. Accordingly, the facility must comply with any regulations, policy directives or letters from the Social Security Administration in regard to the use of these funds and income. In the event of a conflict between 115 CMR 3.00 and the federal requirements, the federal requirements shall govern.

(b) When the facility director is designated by the Social Security Administration as the representative payee of an individual, the facility director must notify the District Office of Social Security whenever there is a change in status of the individual which could affect the amount of income for which the individual or the person to whom the income is paid is eligible.

(c) The facility director shall immediately notify the District Office of the Social Security Administration upon the appointment of a guardian or conservator for an individual who is receiving Social Security funds or Supplemental Security Income.

(d) Whenever the facility receives a request from the Social Security Administration regarding the ability of an individual to manage and spend his or her funds, the most recent evaluation under 115 CMR 3.08(5) shall be determinative of the facility's response.



3.08: continued

(15) Separation of the Individual from the Facility.

(a) The facility director shall immediately notify the District Office of the Social Security Administration upon the temporary or permanent separation from the facility of an individual receiving Social Security funds or Supplemental Security Income. When separation is being planned, the facility director shall give the District Office advance notification.

(b) Upon the individual's formal discharge from the facility, all funds shall be immediately paid to the individual or to his or her guardian or conservator, or successor representative payee if applicable, except that if the individual is being transferred to another facility, any dependent funds as defined in 115 CMR 3.08(8)(a), shall be transferred to the facility director of such other facility. Upon discharge or transfer, a written accounting of the individual's funds shall be rendered to the person receiving the funds.

(16) Burial Expenses. Upon the death of an individual, all of the individual's funds become a part of his or her estate, to be administered by an executor or administrator. Thus, when an individual dies, the facility may not use his or her funds for any purpose, including burial expenses, unless otherwise allowed by law.

3.09: Protection of Human Rights/Human Rights Committees

(1) The head of every provider of residential, day, or site-based respite services ("provider" in 115 CMR 3.09) and every specialized home care placement agency subject to 115 CMR 5.00 shall establish and empower a human rights committee in accordance with the requirements of 115 CMR 3.09.

(a) Human rights committees may be established jointly by the heads of more than one provider or placement agency, or to serve as the human rights committee for more than one location where services are delivered by the same provider or agency, provided that:

1. no human rights committee may serve locations or placement agencies in more than one region; and
2. the programmatic diversity of the services being provided are not so great so as to limit the effectiveness of the committee in meeting the requirements of 115 CMR 3.09.

(b) The general responsibility of the committee shall be to assist the provider to affirm, promote, and protect the human and civil rights of individuals served and to monitor and review the activities of the provider or agency with regard to the human and civil rights of those individuals, consistent with the requirements of 115 CMR 3.09. The committee shall take such action as it determines is required to protect such human and civil rights. The committee shall have the following powers and duties:

1. to monitor and review (with authority to approve or disapprove based on compliance on noncompliance with the Department's regulations) the authorization and use of behavior modification interventions proposed for individuals served by the provider or agency in accordance with the regulations of the Department;
2. to monitor and review the authorization and use of all emergency restraints and other limitations on movement in accordance with 115 CMR 5.04 and 115 CMR 5.05;
3. to monitor the conduct of research at the provider's program sites to determine that the research has been reviewed and approved by the Department's Research Review Committee and that it is carried out in accordance with any conditions set by that body;
4. to monitor and review the means utilized by the provider or agency to:
  - a. inform individuals, staff, guardians, and families of the individual's rights;
  - b. train individuals served in the exercise of their rights;
  - c. provide individuals with the opportunities to exercise their rights to the fullest extent of their capabilities and interests;

3.09: continued

5. to review the policies and procedures of the provider or agency annually for compliance with the Department's regulations on human rights;
  6. to make recommendations to the provider or agency and the Department to improve the degree to which the human and civil rights of the individuals served are affirmed, promoted, protected, and monitored;
  7. to visit the location where services are provided while they are being provided, with or without prior notice.
- (c) Each human rights committee shall be composed of a minimum of five members; regardless of the total number of members, at least three of the members shall be individuals receiving services or supports provided, purchased, or arranged by the Department, or parents or guardians of, or advocates for, such individuals; no member may have a direct or indirect financial interest or administrative interest in the provider; and, where the Department is not the provider, not more than one of the members shall have any direct or indirect financial or administrative interest in the Department.
1. The committee members shall have experience and knowledge relevant to duties of the committee; the committee shall include the following:
    - a. a physician or nurse;
    - b. a psychologist or masters level practitioner with expertise in mental retardation and developmental disabilities, mental illness, or applied behavioral analysis; and
    - c. an attorney, law student, or paralegal with relevant expertise.
  2. The committee shall appoint a chairperson from among its membership, who shall not have any direct or indirect financial or administrative interest in the provider or placement agency.
  3. The committee shall develop such operating rules and procedures as it deems necessary to accomplish its purposes under 115 CMR 3.09.
  4. The committee may appoint sub-committees from among its membership to perform specific functions, provided that the sub-committee members have relevant expertise or experience for assigned tasks.
- (d) The committee shall meet as often as necessary upon call of the chairperson, or upon request of any two members, but no less than quarterly, and shall be familiar with the location where individuals live and spend their daytime hours. Minutes of the committee meetings shall be kept, and duplicates filed with the area office director and the assigned human rights specialist from the office for human rights.
- (2) The head of every provider and the head of every specialized home care placement agency subject to 115 CMR 5.00, shall designate and empower a person employed or affiliated with the provider or agency to serve as the human rights coordinator and to undertake the following responsibilities as a formal component of his or her job description for the provider or agency:
- (a) To coordinate the scheduling of meetings of the human rights committee(s);
  - (b) To attend the meetings of the human rights committee(s) and take minutes of the meetings;
  - (c) To gather for the provider or agency and for the human rights committee(s) human rights information relevant to the provider's or agency's ability to meet its obligations under the Department's regulations and to otherwise assist the provider or agency in the development of means to promote the human and civil rights of individuals served;
  - (d) To coordinate the provider's or agency's human rights officers in meeting their responsibilities; and
  - (e) To assume such other responsibilities as may be assigned by the human rights committee(s).
- (3) The head of every provider subject to 115 CMR 3.00 shall for each location where services are provided, and the head of every specialized home care placement agency subject to 115 CMR 5.00 shall designate and empower a person employed or affiliated with the provider or agency to serve as the provider's or agency's human rights officer and to undertake the following responsibilities as a formal component of his or her job description for the provider or agency:
- (a) To participate in training programs for human rights officers offered or approved by the Department;

3.09: continued

(b) Under the general direction of the human rights coordinator and with technical assistance of the Department, to develop and implement means:

1. to inform the staff, individuals served, and their families of the individuals' rights, including making copies of 115 CMR 5.00 available for inspection at any time by each individual or other interested person;
2. to annually train individuals served in the exercise of their human rights, to the maximum of their capabilities and interests (with such annual training to be documented in the individual's record), and to assist them to exercise those rights;
3. to provide individuals served with opportunities to exercise their rights to the fullest extent of their capabilities and interests, including informing them of the grievance procedures and the right to go to the human rights committee on any issue involving human rights; and
4. to otherwise assist the provider or agency in the development of means to promote the human and civil rights of individuals served.

(c) With the technical assistance of the Department, to provide legal information and referral service to individuals served and direct assistance in obtaining legal advice or representation through the Disability Law Center of Massachusetts, the Committee for Public Counsel, legal assistance agencies, lawyer cooperatives or clinics, lawyer referral programs of the Massachusetts Bar Association, or other county or local bar associations, or other available means.

REGULATORY AUTHORITY

115 CMR 3.00: M.G.L. c. 19B, §§ 1, 2, 9, 11, 12 and 14; c. 123B, §§ 2 and 16.

NON-TEXT PAGE